IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-12-2006

CORAM

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

WRIT PETITION No.3466 OF 2006

E.Shahul Hameed ... Petitioner

-vs-

State of Tamil Nadu,
rep.by its Secretary to Government,
Home Department, Fort St.George,
Chennai - 600 009. ... Respondent

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus.directing the Respondent to consider the representation of the petitioner dated 02.01.2006 by reviewing to TADA Case in C.C. NO. 1/97 on the file of Designated Court, Tirunelveli.

For petitioner : Mr.R.Sankarasubbu
For respondent : Mrs.C.K.Vishnu Priya,
Govt.Advocate,
assisted by Mr.N.Chandrasekaran,
Spl.G.P. for CBI.

O R D E R

Prayer of the petitioner is to direct the respondent, namely, Government of Tamil Nadu, to consider the representation of the petitioner, dated 02.01.2006, by reviewing his case in C.C.No.1 of 1997 pending on the file of Designated Court at Tirunelveli.

2. Petitioner is one of the undertrial prisoners, facing trial for the offences under Sections 120 (B) and 302 IPC and also for the offences under Terrorist and Disruptive Activities Act (TADA). It appears there are some more accused in the same case and all of them are undertrials, languishing in prison for 9 years.

3. The contention of the petitioner is that the provisions of TADA do not attract in the instant case and the case should be tried as a regular sessions case and hence, the State has to take necessary steps by reviewing and transferring the case to the regular Sessions Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. Heard the arguments of both sides.

5. During the course of arguments, it is revealed that the trial in the case has commenced long back and it is at the stage of Section 313 Cr.P.C. Examination before the learned Designated Court and at this stage, the petitioner has filed this Writ Petition and thereby the trial could not be completed and it is pending.

6. The main contention of the petitioner is that the Hon'ble Supreme Court of India in Kartar Singh v. State of Punjab // 1994 (2) L.W.(Cri)422 //, observed that a high level committee is to be constituted by the State to review cases of TADA and take necessary steps.

7. Perused the above judgment. The Supreme Court, in paragraph 179 of the judgment, observed that the Government should review the cases at their respective level in order to arrive at a decision to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of action in every matter and so on.

8. At this stage, it is necessary to note that the observation of the Supreme Court, directing the State to review the cases, is to review the action of the enforcing authorities and not the action of the adjudicating authorities.

9. It is a known fact that the enforcing authorities i.e., police are under the control of the State whereas the adjudicating authority is not functioning under the control or supervision of the Government.

10. The counsel misread the judgment and filed this Writ Petition as if the State is having control and supervision over the Judiciary. The judgment of the Supreme Court clarifies that all those cases, which are pending at the stage of investigation, are to be reviewed. In the instant case, it is not at the stage of investigation but at the trial stage.

11. In the Code of Criminal Procedure, Chapter XII deals with the Powers of the enforcing authorities. While so, Chapter XVIII deals with trial before the Court of Sessions and Chapter XIX deals with trial before Magistrate Court.

12. The present case is at the stage of trial. After filing of the charge sheet by the enforcing authorities and once cognizance is taken by the Criminal Court, the State has no role to play and it is the prosecution, which has to proceed with the case and it is for the defence to challenge the case of prosecution.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. Transfer of criminal cases from one court to another court is dealt with in the Code under Chapter XXXI. As per Section 406, the Hon'ble Supreme Court has power to transfer the cases and appeals; under Section 407, such power is given to High Court and Sessions Court has power to transfer cases under Section 408, whereas power to withdraw cases is also given to Sessions Judge and Judicial Magistrate of First Class under Sections 409 and 410 respectively. Making over of the cases is also provided in the Code under Section 411.

14. Thus, the Code of Criminal Procedure clearly says that the power of transfer or criminal cases or power of withdrawal of criminal cases from one court to another court is given to court and court alone and not to the State.

15. Even according to Section 321 Cr.P.C., State has very limited role with regard to withdrawal from prosecution. State can request the Public Prosecutor or Assistant Public Prosecutor, as the case may be, to withdraw any prosecution and such prosecutor, with the consent of the court, can move an application for withdrawal of prosecution during the trial of the case.

16. Therefore, it is the Court and not the State, which has to give consent for withdrawal. Once the trial has commenced or is pending or charge sheet is filed and cognizance is taken by the Court, the criminal court alone is having power either to charge, discharge, acquit or convict and pass necessary orders. Criminal Court, I mean, is not only the Court of Judicial Magistrate of First Class, but it goes up to the Apex Court, dealing with criminal law.

17. Thus, ignoring all the relevant provisions of the Code of Criminal Procedure and misreading the judgment of the Supreme Court, the petitioner has approached this Court with a prayer to give direction and such a direction can never be given under any law and, in fact, the writ petition itself is not maintainable.

18. Learned counsel appearing for the prosecution brought to the notice of this Court that prosecution is ready to proceed with the case but because of the pendency of the writ petition, they are unable to conclude the trial.

19. In the above circumstances, this Court directs the learned Presiding Officer of the Designated Court at Tirunelveli to post the case C.C.No.1 of 1997 on day-to-day basis, which is permissible under the Code of Criminal Procedure and the Criminal Rules of Practice, by giving schedule and directing both the parties to strictly adhere to the trial schedule, complete the trial and pronounce the judgment expeditiously, as it is noticed that not only the petitioner but the other accused are also

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

languishing in jail for more than 9 years and it is our duty to give expeditious disposal to the case.

20. In the result, the Writ Petition is dismissed. No costs. Consequently, the connected W.P.M.P.Nos.3684 and 18407 of 2006 are also dismissed.

rj/dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Secretary to Government,
State of Tamil Nadu,
Home Department, Fort St.George,
Chennai - 600 009.

+ one cc to Mr. R. Sankarasubbu, Advocate sr no. 60707
+ one cc to the Government Pleader sr no. 60637
+ one cc to Mr. N. Chandrasekaran, Advocate sr no. 60300

PK(CO)
NM(13.12.2006)

W.P.No.3466 OF 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/